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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------|
| 10/698,298   | 10/31/2003  | Patrick T. Marshall  | BIRD.1134                | 1386             |
| 24038  | 7590        | 11/04/2004           | EXAMINER                 |                  |
| MARTIN & ASSOCIATES, LLC<br>P O BOX 548<br>CARTHAGE, MO 64836-0548 |             |                      | PRICE, RICHARD THOMAS JR |                  |
|  |             | ART UNIT             |                          | PAPER NUMBER     |
|  |             |                      |                          | 3643             |

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |   |
|------------------------------|------------------------|---|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>                     |
|                              | 10/698,298             | MARSHALL, PATRICK T. <i>[Signature]</i> |
| <b>Examiner</b>              | <b>Art Unit</b>        |   |
| Thomas Price                 | 3643                   |   |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 August 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

The response filed on 08-06-2004 as a result of a restriction requirement has been noted. The Applicant has elected claims 1-6 without traverse.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacGillivray U.S. Patent 4,275,686.

MacGillivray teaches a horse exerciser drive mechanism which is structurally similar to the Applicant's claimed apparatus. The device includes a motor or drive mechanism 3, a controller or speed control switch 16 and an animal sensing mechanism or human that detects an animal and determines whether the animal is of a first or second type. A human can manipulate the switch to vary the motor speed. Regarding claims 3 and 4, MacGillivray does not specific revolutions per minute as claimed. However, in column 4, last two paragraphs, by adjusting nut 29, the total speed reduction ratio can by infinitely adjustable. Further, one of ordinary skill in the art at the time the invention was made can vary the revolutions per minute to various speeds, even speeds as claimed, depending on the animal being trained. In regards to claim 5, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use

the device to exercise a variety of animals not just horses. As for claim 6, MacGillvray does not discuss the use of a wireless interface coupled to the controller. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the wiring apparatus of MacGillvray with a wireless interface, in order to control the speed from a distance instead of stopping the device each time the speed needed to be adjusted.

***Allowable Subject Matter***

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Prior Art of Record***

The prior art of record show similarly animal exercising devices in which the motor speed can be adjusted depending on the animal using the device.

***Conclusion***

Summary: Claims 1 and 3-6 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 703-308-2694. The examiner can normally be reached on Monday through Friday from 8:30a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Thomas Price  
Primary Examiner GAU: 3643

rtp